



The Voice of Rural Telecommunications

ORIGINAL

September 16, 1998

EX PARTE OR LATE FILED

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SEP 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Notice
CC Docket No. 96-115

Dear Ms. Salas:

On Wednesday, September 15, 1998, the undersigned of the National Telephone Cooperative Association, Larry Sargeant, United States Telephone Association, Todd Lantor and Mary Madigan, Personal Communications Industry Association, and Andrea Williams, Cellular Telecommunications Industry Association participated in a discussion with Daniel Connors of Commissioner Ness' office.

The associations discussed issues related to stay of the Commission's "flagging" and "tracking and auditing" rules. They presented the attached documents. The documents show that the costs of complying with flagging and audit and tracking requirements are substantial, especially for small carriers.

These costs are especially burdensome in light of the effort required to address potential Y2k problems in computer systems. The associations pointed out that the Securities and Exchange Commission (SEC) stayed all rules that require major reprogramming of computer systems by SEC regulated companies on September 3. The SEC moratorium is intended to facilitate the allocation of resources to addressing potential problems caused by the year 2000 computer technology conversion. The Associations urged prompt issuance of a stay of the flagging and auditing and tracking rules to prevent the unnecessary expenditure of scarce carriers' obligations as the January 26, 1999, enforcement date approaches.

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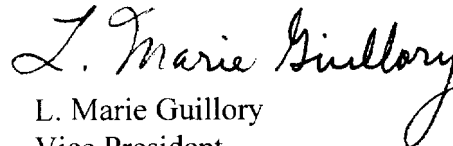
September 16, 1998

Page Two

The Associations also pointed out that the record does not support a need for these rules. The Commission has other means of enforcing the requirements of Section 222. Moreover, many parties suggested alternatives in their comments and petitions for reconsideration of the rules.

In accordance with the ex parte rules, an original and one copy of this letter and attachment are being submitted to the Secretary. If there are any questions in this matter, please contact me at NTCA.

Sincerely,

A handwritten signature in cursive script that reads "L. Marie Guillory". The signature is written in dark ink and is positioned above the printed name and title.

L. Marie Guillory

Vice President

Legal and Industry

Attachments

cc: Daniel Connors

BELLSOUTH

Ben G. Almond
Vice President-
Federal Regulatory

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July 21, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RECEIVED
JUL 21 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Telecommunications Carriers' Use of Customer Proprietary Network
Information and other Customer Information, CC Docket 96-115
Ex Parte

Dear Ms. Salas:

This is to notify you that on July 21, 1998, A. Kirven Gilbert, Linda Lancaster and Ben Almond, all of BellSouth Corporation met with Tom Power, Legal Advisor to Chairman William F. Kennard and in a separate meeting with Carol Matney, Brent Olson, Tonya Rutherford, Kristen Murray, Lisa Choi of the Common Carrier Bureau and Nancy Boocker and Jonathan Radin of the Wireless Telecommunications Bureau concerning the referenced subject. The focus of the discussion centered on the electronic audit requirement as a costly and burdensome requirement for BellSouth and the Industry to implement by the effective date of January 26, 1999. The attached documents were used for discussion purposes.

Please associate this notification and the accompanying document with the referenced docket proceeding.

If there are any questions concerning this matter, please contact the undersigned

Sincerely,



Ben G. Almond
Vice President-Federal Regulatory

Attachments

cc: Tom Power
Carol Matney
Brent Olson
Tonya Rutherford
Kristen Murray
Lisa Choi
Nancy Boocker
Jonathan Radin

July 20, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

The Honorable Gloria Tristari
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Re: CC Docket No. 96-115 -- Telecommunications Carriers' Use of Customer
Proprietary Network Information (CPNI); *Ex Parte*

Dear FCC Chairman and Commissioners:

We are writing to you jointly to emphasize our common concern with the mechanized safeguard requirements adopted in the *Second Report and Order* in the above-referenced proceeding and to urge prompt interim relief from those requirements. Specifically, we are asking the Commission, on its own motion, to stay those requirements pending the Commission's review of them on reconsideration.

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, 1998) ("Second Report and Order" or "Order").

In the *Second Report and Order*, the Commission adopted rules pursuant to Section 222 of the Act to govern all carriers' use of customer proprietary network information (CPNI). The Commission also adopted a panoply of safeguards to foster carrier compliance with those rules, including training mandates, supervisory review processes, and officer-level compliance certification requirements.

The Commission imposed two systems-based mechanized safeguards. First, all telecommunications carriers are required to develop and implement software systems that "flag" customer records to indicate whether the customer has approved of the marketing use of his or her CPNI. This "flag" must be conspicuously displayed within the first few lines of the first computer screen of a customer's record. Second, all carriers are obligated to develop and implement an "electronic audit" mechanism that tracks access to customer accounts and that is capable of recording whenever records are opened, by whom, and for what purpose. Carriers are further required to retain all of this tracking data for a full year. Both of these requirements will become enforceable on January 26, 1999.

Numerous carriers, large and small, from across all industry segments, including individual members of the undersigned associations and many of the associations themselves, as well as IXCs, have filed petitions for reconsideration or other relief from these electronic safeguard requirements. The reasons presented in support of reconsideration can be boiled down to their essentials. First, the underlying NPRM provided inadequate notice of the possibility of such requirements; as a corollary, the record is insufficient to sustain the requirement. Second, the Commission's *Order* severely underestimated the costs and complexities of implementing the requirements.² Carriers' estimates of implementation costs have ranged from *hundreds of millions* of dollars for larger carriers (AT&T, MCI) to proportionately burdensome tens of thousands of dollars for smaller carriers (NTCA). Several parties have also expressed grave concerns over the drain such IT-intensive projects could impose on Y2K and other mandated efforts. Third, the *Order* overestimates the benefits to be derived from the requirements adopted. In particular, contrary to the Commission's stated expectations, the electronic audit requirement has been shown not to be a reliable means of determining whether CPNI has been used properly. In short, the various petitions and supporting comments compellingly demonstrate that the electronic safeguard requirements of the *Second Report and Order* do not survive a cost/benefit analysis and should be eliminated.

² In fact, in addressing the costs and complexities of implementing the requirements, the Commission merely states in the *Order* "...that these requirements are not unduly burdensome. All carriers must expend some resources to protect certain information of their customers." See *Order* at ¶194. Moreover, the Commission had a statutory duty pursuant to the Regulatory Flexibility Act, as amended, to not only rely on the alleged capabilities of large carriers, but to also analyze the economic impact of these provisions on all small entities, to provide small entities with sufficient notice and opportunity to comment on the costs, recordkeeping, and reporting requirements, and to detail the burdens that the mechanized safeguards will impose. The Commission did not fulfill these requirements. See Office of Advocacy, U.S. Small Business Administration, *Ex Parte* Comments, at 3 (July 15, 1998).

Yet, our present purpose is not to pursue that result on its merits. Instead, our instant objective is to bring to the Commission's attention, and to seek prompt relief from, the immediate burdens imposed by these requirements.

In order to be compliant by the January 26, 1999 deadline, carriers must begin expending monetary and other resources now. As indicated above, the necessary monetary commitments are substantial, and the availability of IT expertise is constrained by other projects of at least equal importance. Yet, if the Commission ultimately eliminates these requirements, as the record on reconsideration clearly shows the Commission should, the commitment of resources to these requirements will be rendered unnecessary. We therefore implore the Commission to stay its electronic safeguard requirements pending reconsideration in order to avoid such likely economic waste.

Grant of an interim stay will not harm any party. But for one lone carrier who dissented only with respect to the flagging requirement, the respective petitions garnered no opposition in subsequent pleading cycles. And, even that carrier would not be harmed by the requested stay insofar as that carrier, too, would be relieved of the requirements' burdens. Further, consumers' interests would continue to be protected through the substantive CPNI rules adopted in the *Order* and the existing notification, training, supervisory review, and compliance certification requirements. Conversely, carriers who expend significant resources to implement requirements that are not likely to produce the intended benefits and for which a real possibility of elimination or modification exists will have no means to recover these expenditures and will be harmed irreparably. The public interest demands avoidance of such unnecessary economic waste.³

For these reasons, we collectively and respectfully ask the Commission to move swiftly to issue an interim stay of the electronic safeguard requirements of the *Second Report and Order*, pending further consideration of those requirements on their merits.

Sincerely,


Jay Kitchen

President

Personal Communications Industry Association
(PCIA)



Roy M. Neel

President & CEO

United States Telephone Association
(USTA)

³ Even if the Commission ultimately does *not* modify or eliminate its requirements on reconsideration, a stay is appropriate now to avoid the possibility of substantial economic waste. *Rules and Policies Regarding Calling Number Identification Services - Caller ID*, 10 FCC Red 13819 (1995).



Thomas E. Wheeler
President/CEO
Cellular Telecommunications Industry Association
(CTIA)



Russell Frisby
President & CEO
Competitive Telecommunications Association
(CompTel)



John N. Rose
President
Organization for the Protection and Advancement
of Small Telephone Companies (OPASTCO)



John S. O'Neill
General Counsel
National Rural Telecommunications Association
(NRTA)



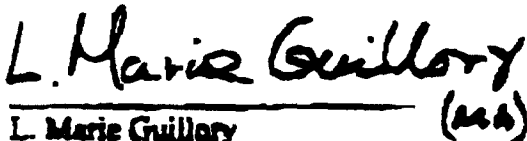
Kathleen A. Kaercher
Executive Director
Small Business in Telecommunications



David W. Zetiger
Executive Director
Independent Telephone & Telecommunications
Alliance (ITTA)



Jennifer Dunk-Jarrell
Executive Director
America's Carriers Telecommunications
Association (ACTA)



L. Marie Guillory
Regulatory Counsel
National Telephone Cooperative Association
(NTCA)

cc: **Mr. Ari Fitzgerald, Legal Advisor, Office of the Chairman**
Mr. David Siddall, Legal Advisor, Office of Commissioner Ness
Mr. Paul Misener, Senior Legal Advisor/Chief of Staff,
Office of Commissioner Furchgott-Roth
Mr. Peter Tenbula, Office of Commissioner Powell
Ms. Karen Gulick, Legal Advisor, Office of Commissioner Tristani
Mr. Dan Phytbyon, Chief, Wireless Telecommunications Bureau
Ms. Kathryn C. Brown, Chief, Common Carrier Bureau

Mr. Thomas Power, Legal Advisor, Office of the Chairman
Mr. James Casserly, Senior Legal Advisor, Office of Commissioner Ness
Mr. Kevin Martin, Legal Advisor, Office of Commissioner Furchtgott-Roth
Mr. Kyle Dixon, Legal Advisor, Office of Commissioner Powell
Mr. Paul Gallant, Legal Advisor, Office of Commissioner Tristani

BELLSOUTH

Ex Parte Presentation

CC Docket No. 96-115

**Telecommunications Carriers' Use of Customer
Proprietary Network Information (CPNI)**

THE NEED FOR A STAY OF THE ELECTRONIC AUDIT REQUIREMENT

- **The Requirement:**
 - Carriers must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose; record is to be retained for one year. (Order ¶ 199; Rule § 64.2009(c).
 - Requirement to be enforced 1/26/99 (Order ¶ 202).
- **Expectation Reflected in Order:**
 - "Such access documentation will not be overly burdensome" (Order ¶ 199).
- **Reality Reflected in Numerous Reconsideration Petitions and Supporting Pleadings:**
 - Requirement is extremely burdensome, imposes potentially hundreds of \$millions cost on industry, competes with Y2K implementation for human expertise/resources, and produces no commensurate benefits.
- **Need/Interim Solution:**
 - Stay of requirement pending reconsideration.
 - Stay is needed now to avoid likely economic waste.

THE STAY STANDARD

- **Instant Circumstances Satisfy 4-Prong Stay Standard (Virginia Petroleum Jobbers)**

1. **Likely to prevail on the merits**

- Requirement is at odds with Commission's intent not to impose burdensome requirement
- Requirement does not survive cost/benefit analysis
- Substantial and widespread concurrence across industry and no opposition

2. **Irreparable harm**

- Implementation cost estimates range from \$60-70K for small carriers to hundreds of \$millions for larger carriers

Examples:

- MCI: up to \$1 billion per year,
- BellSouth: at least \$75 million over 5 years;
- NTCA: \$64-100 per line;
- AT&T: \$125 million+ even for requirement limited to certain systems

- Needless expenditures on systems slated for retirement/replacement shortly after effective date

THE STAY STANDARD (cont.)

- Drain on Y2K and other IT-intensive projects
 - Current expenditures of monetary and human resources will be forever lost if requirement is lifted (or modified) on reconsideration
- 3. No interested party harmed if stay is granted**
- Substantive CPNI requirements remain in effect, protecting customer rights
 - Multiple parties from all industry segments have requested relief, none has opposed it
 - Compliance assured through training, certification, supervisory review
- 4. Public interest favors a stay**
- Public interest disfavors economic waste
 - Stay will not affect customers' substantive CPNI rights

PROCEDURAL AND TIMING ISSUES

- **Commission Can Issue Stay on Its Own Motion**
 - Record is adequately developed
 - Precedent - Caller ID
- **Stay is Needed Promptly**
 - By 8/15/98 to avoid/minimize unnecessary financial outlays and commitments (e.g., contracts with third party software vendors)

Carriers	PFRs	Estimated \$ Impact
ALLTEL	<ul style="list-style-type: none"> • Effective date of Order should be stayed pending reconsideration • Safeguards are overly burdensome • ...use restrictions could take 9-18 months to implement for largest carriers (p8) 	
Ameritech	<ul style="list-style-type: none"> • ... Commission should eliminate its electronic audit requirement... (p11) • If Ameritech were required to "track" each pre-processing step, this would generate over a trillion records alone (p10) 	
AT&T	<ul style="list-style-type: none"> • should be eliminated (p8) • unjustifiable requirement • electronic audit cannot be justified under a cost benefit analysis because the costs far outweigh any conceivable consumer privacy or compliance benefit (p11) • ...development could be expected to take 2-4 years (p13) 	<p>AT&T estimates that creating such an electronic audit system would require one time out-lays exceeding 270 million, and ongoing charges would exceed that amount annually. (p11)</p> <p>...expenditures in the hundreds of millions of dollars for the electronic audit trail requirement would be counterproductive in that the resulting systems would not serve to increase carrier compliance with CPNI requirements, yet at the same time, they would divert substantial resources and decrease operating efficiency, all to the detriment of the carrier's customers. (p12)</p>
Bell Atlantic	<ul style="list-style-type: none"> • Commission should eliminate Section 64.2009(a) and (c) of the Rules, which specify systems requirements. (p22) 	

Carriers	PFRs	Estimated \$ Impact
BellSouth	<ul style="list-style-type: none"> • Access documentation/audit trail "safeguard" imposed by the Commission <ul style="list-style-type: none"> ⇒ is not required by the Act ⇒ is costly and burdensome ⇒ does not serve the public interest ⇒ should be eliminated (p18) • Elimination of the access documentation requirement will not leave customers records open to uncontrolled abuse. As the Commission noted in the Order, use restrictions ... can and will be effective when coupled with personnel training. (p23) 	<p>...preliminary estimates are that five-year implementation costs will easily exceed \$75 million for BellSouth alone. This figure approaches the \$100 million the Commission could not find justifiable for an access restriction requirement and is more than 100 times the \$700,000 that the Commission seems to have found more palatable for a use restriction requirement.</p>
CompTel	<ul style="list-style-type: none"> • Commission should reconsider its computer system upgrades rules ... develop a record on the costs and benefits of requiring carriers to rewrite their computer systems to track information related to CPNI. (Section V) 	
Frontier	<ul style="list-style-type: none"> • ...requirement that it also monitor the purpose for which CPNI is accessed, however, is likely unnecessarily burdensome. (p4) • This rule would be expensive and burdensome to implement, and in an environment of rapid change, it may prove to be transitional at best. No business can justify the expenditure independently. (p4) • By eliminating this one requirement, the Commission will not lose the ability to audit carrier compliance with section 222 or otherwise ensure that carriers comply with regulations. Comparing the time and expense that would be required to comply with this requirement with the relatively minor benefits that its retention would engender, the Commission should rescind it. 	<p>... believes that this effort would take several months and cost a substantial amount of money. (p4)</p>

Carriers	PFRs	Estimated \$ Impact
GTE	<ul style="list-style-type: none"> • Rule 64.2009(c) requires that carriers must maintain an electronic audit mechanism in its belief that "[s]uch access documentation will not be overly burdensome because many carriers maintain such capabilities to track employee use of company resources for a variety of business purposes unrelated to CPNI compliance. If applied to all systems, such an undertaking would impose a data processing burden on carriers that could rival Y2K requirements. (p41-42) 	
Independent Alliance	<ul style="list-style-type: none"> • overly burdensome, impractical and costly • impacts Y2K 	\$150K to 200K
LCI	<ul style="list-style-type: none"> • Carriers should be given at least 18 months to implement any systems modifications necessary to comply with the new rules. (p6) • ...gather specific evidence of the costs and benefits before imposing detailed compliance obligations. (p6) 	...LCI is still in process of developing specifications ... it is apparent that the cost will reach into the many millions of dollars (p-4)
MCI	<ul style="list-style-type: none"> • Excessively burdensome and unnecessary (p34) • take years to implement • divert resources from other more vital projects such as Y2K 	...billions of records would need to be recorded every day to maintain a complete audit trail. Given the current cost of mainframe data storage and associated overhead, as much as \$4 million of additional storage would be required to maintain one day's worth of auditing information, or over 1 billion per year (p37-38)

Carriers	PFRs	Estimated \$ Impact
National Telephone Cooperative Association	<ul style="list-style-type: none"> Commission should forbear from applying the complex auditing and tracking procedures... (p7) 	NCTA's members estimated they would be required to spend between \$60,000.00 to \$70,000.00 for the capability. For companies with just 600 access lines, this translates to more than \$100.00 per line. (p9)
OmniPoint Communications	<ul style="list-style-type: none"> Electronic audit rules would take effect in early 1999, when carriers' information systems departments will be under enormous pressure to complete Year 2000 updates. (p15) 	
Personal Communications Industry Association (6/29/98 Pet. for Forbearance)	<ul style="list-style-type: none"> Electronic audit trail requirement requires carriers to re-write their customer support software and maintain a huge volume of electronic data for which there is no business purpose; problem is multiplied over thousands of carriers. (pages 19-20) 	
Sprint	<ul style="list-style-type: none"> 265K Person Hours (p4) 127 employees full-time for 1 year ...the Commission does not cite to any record evidence demonstrating that "unauthorized casual perusal of customer accounts" is a significant problem. (p4) 8 to 24 months (p3) 	\$19.6 million (p4)
TDS	<ul style="list-style-type: none"> At the very least, the Commission should change its "verdict first" and "trial later" approach. (p3) The audit tracking and reporting function could not be achieved by any upgrade TDS Telecom could discover, so that its systems would have to be completely overhauled or replaced... (p13) 	...at a cost of tens of millions of dollars. (p13)

Carriers	PFRs	Estimated \$ Impact
USTA	<ul style="list-style-type: none"> • ...costly, inefficient, overly regulatory (p9) • ...needlessly impose costs, introduce inefficiencies in carrier processes and focus on "speculative dangers." (p11) • A better approach would be for the Commission to stay the rules concerning the safeguards until it acts upon this and other reconsideration petitions. Then, on reconsideration, the Commission should rescind Section 64.2009 of its rules. (p15). 	
Vanguard Cellular	<ul style="list-style-type: none"> • Complexity of compliance is increased because many of the underlying systems used by CMRS providers must be changed not only to address the CPNI rules, but also to ensure Year 2000 compliance, provide number portability, or to meet other requirements that will come into effect in the next 18 months. (p8) 	

Justifying the Need for a Stay of the CPNI Electronic Safeguard Requirements
Ex Parte Presentation - CC Docket No. 96-115

- **The Requirements:**

(1) Flagging - Telecommunications carriers are required to develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and references the customer's existing service subscription.

(2) Electronic audit - Telecommunications carriers must maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose. Carriers must maintain these contact histories for a minimum period of one year.

Both of these requirements become enforceable on January 26, 1999

- **Why the "flagging" and "electronic audit" requirements are unnecessary and unreasonable:**

- Other parts of the CPNI rules already provide sufficient protection for consumers. For example, under the CPNI rules:
 - Telecommunications carriers must train their personnel as to when they are authorized to use CPNI and implement an express disciplinary process.
 - Sales personnel must obtain supervisory approval of any proposed outbound marketing request and maintain records of carrier compliance for a minimum period of one year.
 - Telecommunications carriers must also have a corporate officer, as an agent of the carrier, sign a compliance certificate on an annual basis and file it with the FCC.
- The CPNI requirements will further drain carriers' information technology resources -- which are largely focused on Y2K compliance issues.

Note: The Securities and Exchange Commission (SEC) recently announced a moratorium on the implementation of new SEC rules that require a major re-programming of computer systems by SEC-regulated entities between June 1, 1999 and March 31, 2000. The moratorium is intended to facilitate and encourage securities industry participants to allocate significant time and resources to addressing the potential problems caused by the Year 2000 computer

technology conversion. The Federal Communications Commission should do the same.

- The above requirements fail any cost/benefit analysis. Implementation cost estimates range from \$60,000 for small carriers to \$1 billion for large carriers (MCI).

The Bottom Line

- If the FCC does not issue a stay of the above requirements promptly, carriers will be forced to spend millions of dollars on requirements that may ultimately be modified or even eliminated by the FCC.
- The FCC needs to promptly make a decision on our request for a stay in order to give carriers sufficient time to make the necessary upgrades, train personnel, and meet the compliance date of January 26, 1999.

The Requirements Will Harm Small ILECS

- NTCA conducted survey in April 1998 (Charts attached)
- 60% of 500 members responded

Flagging

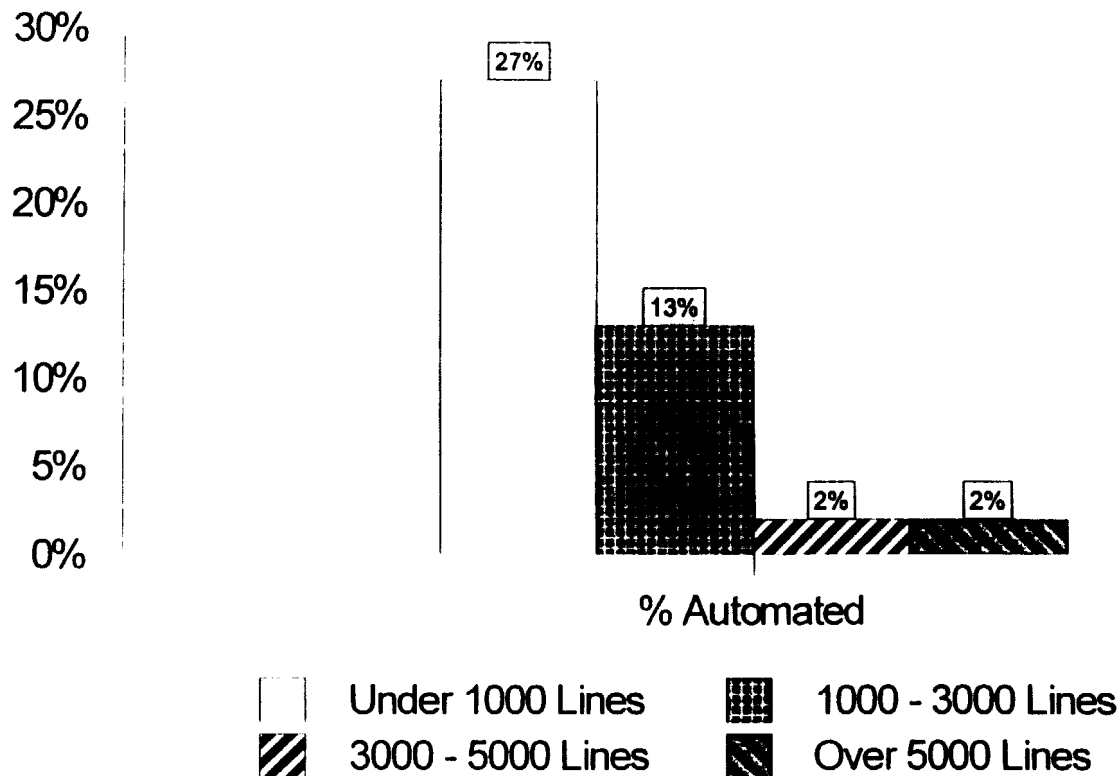
- More than 25% maintain customer records manually
- Less than 10% have ability to add a field to indicate CPNI approval status
- 90% will need significant upgrades to systems or software
- Cost of upgrades are estimated to be \$40-60k per company

Auditing and tracking

- Only 6% have electronic audit capability
- No one has capability to track access to customer accounts, including when a customer record is opened, by whom and for what purpose
- Cost to implement tracking is estimated between \$60-70K per company
- Total auditing and tracking costs estimated at \$300 per line for a 300-line company

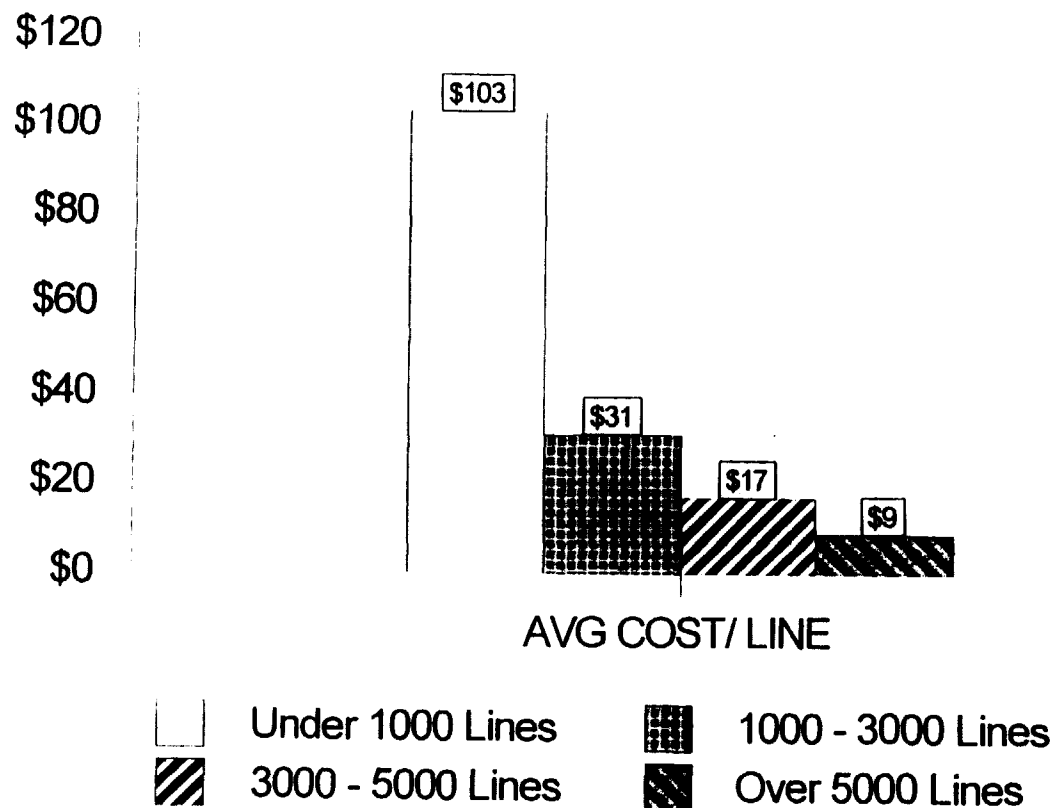
Rules are overkill

- Telcos have no incentive to violate consumer privacy
- Less burdensome measures can be used and developed by telcos themselves



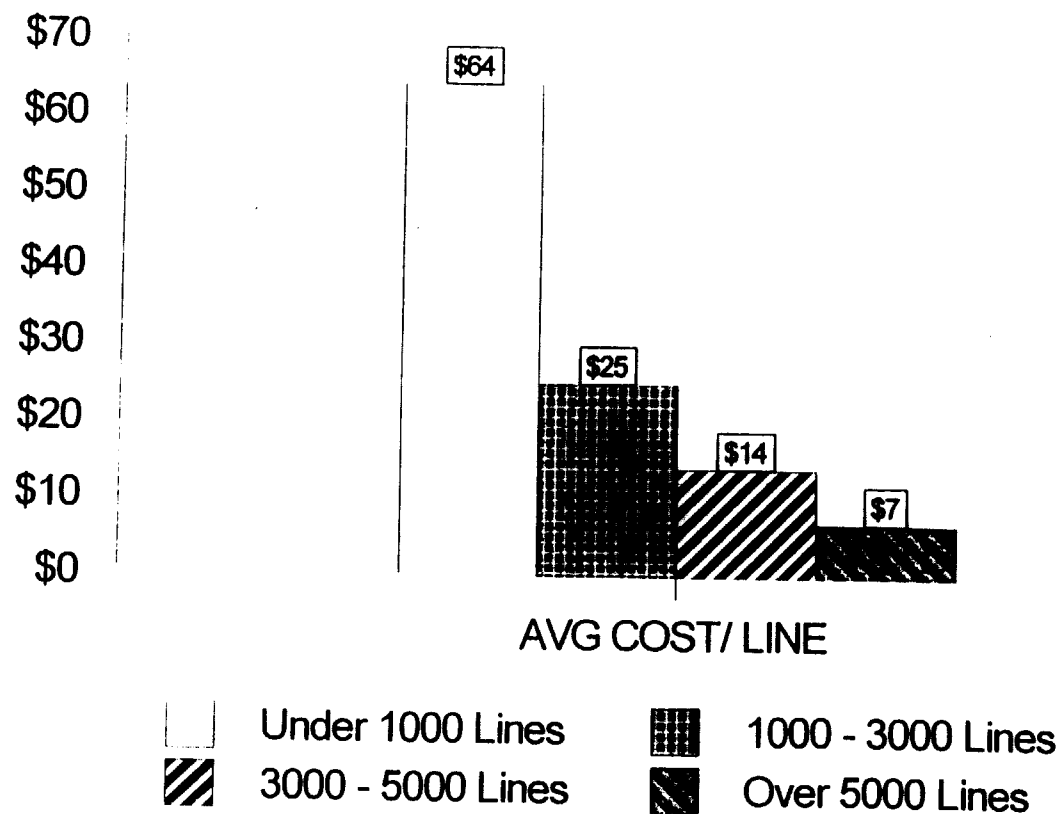
PERCENT OF COMPANIES WITHOUT MECHANIZED CUSTOMER SERVICE RECORDS

Source: NTCA Member Survey, April 1998



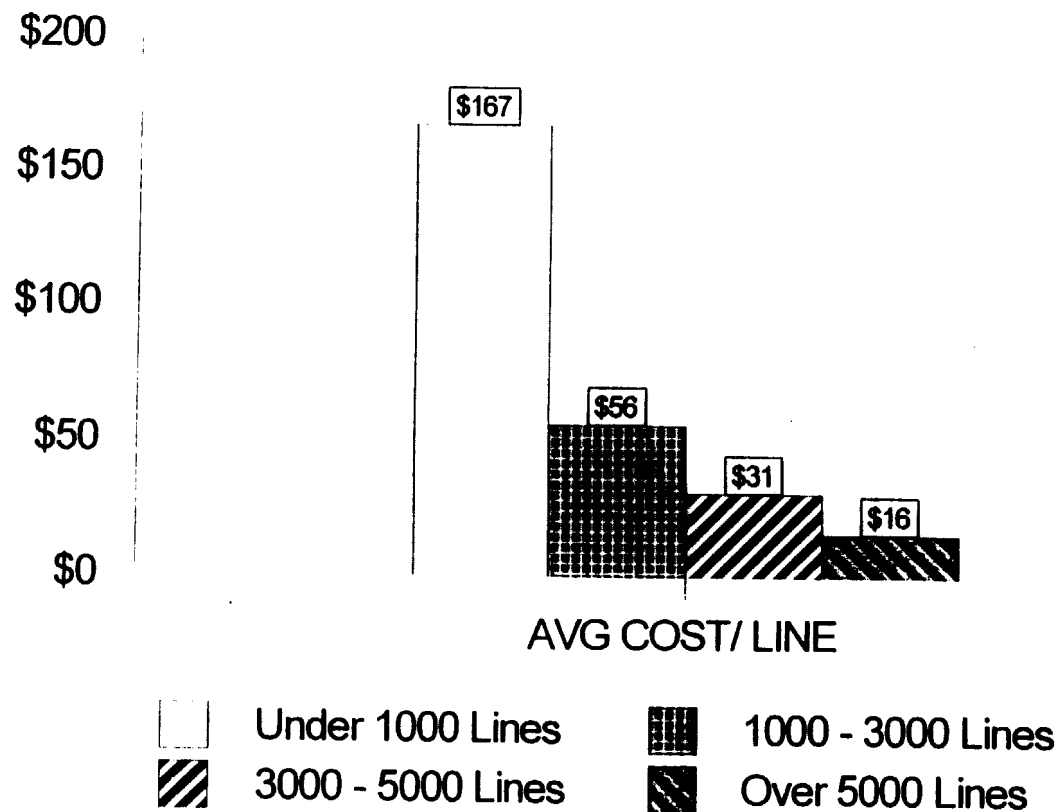
**ESTIMATED AVERAGE COST / LINE TO
IMPLEMENT ELECTRONIC AUDIT CAPABILITY**
(assumes already automated)

Source: NTCA Member Survey, April 1998



ESTIMATED AVERAGE COST / LINE TO ADD CPNI APPROVAL STATUS FIELD

Source: NTCA Member Survey, April 1998



**TOTAL ESTIMATED AVERAGE COST / LINE TO
COMPLY WITH CPNI ORDER**

Source: NTCA Member Survey, April 1998